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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,985	03/17/2004	David E. Halasz	72255/00021	3916
23380	7590	02/08/2006	EXAMINER	
TUCKER, ELLIS & WEST LLP 1150 HUNTINGTON BUILDING 925 EUCLID AVENUE CLEVELAND, OH 44115-1475			HU, JINSONG	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,985

Applicant(s)

HALASZ, DAVID E.

Examiner

Jinsong Hu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/17/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Detailed Action***

1. Claims 1-18 are presented for examination.
2. Claim 9 is objected because a dependent claim cannot depend on itself.  
Correction is required.

***Double Patenting***

3. Claims 1-17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,732,163 (hereafter as 163'). Although the conflicting claims are not identical, they are not patentably distinct from each other because both of this application and the patent 163' disclose the same method and system for selecting and operating frequency, except this application claimed the device is "an access point" while the patent 163' claimed the device "a communication device", it is obvious to a person of ordinary skill in the art at the time the invention was made that "a communication device" is a access point.
4. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent, the possible harassment by multiple assignees, and the possibility that one might avoid the effect of

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file wrapper estoppel by filing a second application. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

5. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 5-13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Souissi et al. (US 5,809,059).

8. Souissi is a prior art reference cited by the applicant, filed on 1/5/00.

9. As per claim 1, Souissi teaches the invention as claimed including a method for selecting an operating frequency for a communication device [154, Fig. 1] being added to a wireless network [Fig. 1] including one or more existing communication devices [116, Fig. 1][col. 2, lines 39-54], comprising:

interrogating one or more of the existing communication devices to obtain communication parameter data [i.e., interference measurement, noise level, etc.] indicative of at least the operating frequencies in use by the existing communication devices [col. 2, lines 25-38; col. 3, lines 13-15];

evaluating the communication parameter data [col. 5, lines 20-44]; and

selecting the operating frequency of the communication device being added to the wireless communications network in accordance with said evaluated communication parameter data [col. 5, lines 8-20].

10. As per claim 2, Souissi teaches the step of transmitting at least one request signal at each of a plurality of operating frequencies, wherein any existing communication device receiving the at least one request signal transmits a response signal indicative of receipt of said request signal [col. 2, lines 30-38].

11. As per claim 3, Souissi teaches that the communication parameter data includes a value indicative of the received signal strength of received response signals [col. 5, lines 17-21].

12. As per claim 5, Souissi teaches that the communication parameter data includes a value which indicates a load factor associated with a respective communication device [col. 3, lines 20-23 & 36-38].

13. As per claim 6, Souissi teaches the step of determining which operating frequency will result in the greatest balance among the operating frequencies being used [col. 6, lines 46-54].

14. As per claim 7, Souissi teaches the step of transmitting at the communication device being added, at least one request signal at each of a plurality of operating frequencies, wherein any existing communication device receiving the at least one request signal transmits a response signal indicative of receipt of said request signal [col. 2, lines 30-38].

15. As per claim 8, Souissi teaches the step of selecting the operating frequency selects the least used non-overlapping operating frequency [col. 2, lines 25-28].

16. As per claim 9, Souissi teaches the optimum non-overlapping frequency is the least used non-overlapping operating frequency [col. 2, lines 25-28].

17. As per claim 10, Souissi teaches that the communication device is an communication device [154, Fig. 1] and said existing communication devices are communication devices [116, Fig. 1].

18. As per claim 11, since it is an apparatus claim of claim 1, it is rejected under the same basis as claim 1 above.

19. As per claim 12, since it is an apparatus claim of claim 2, it is rejected under the same basis as claim 2 above.

20. As per claim 13, since it is an apparatus claim of claim 3, it is rejected under the same basis as claim 3 above.

21. As per claim 15, since it is an apparatus claim of claim 5, it is rejected under the same basis as claim 5 above.

22. As per claim 16, since it is an apparatus claim of claim 6, it is rejected under the same basis as claim 6 above.

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23. As per claim 17, since it is an apparatus claim of claim 8, it is rejected under the same basis as claim 8 above.

24. As per claim 18, Souissi teaches the communication device is an access point and the existing communication devices are access points [154, Fig. 1].

***Claim Rejections - 35 USC § 103***

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Souissi et al. (US 5,809,059).

27. As per claim 4, Souissi teaches the invention substantially as claimed in claim 1. Souissi does not specifically teaches the step of determining a value which indicates how many of the existing communication devices use each operating frequency. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a value in Souissi's system for indicating how many existing communication devices use each operating frequency because doing so would improve the transmission quality by avoiding high interference level. One of ordinary skill in the



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art would have been motivated to modify Souissi's system with that indicative value to improve the performance of the whole communication systems.

28. As per claim 14, since it is an apparatus claim of claim 4, it is rejected under the same basis as claim 4 above.

### ***Conclusion***

29. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Nakano (US 6,032,046) discloses a base station frequency assigning system;  
and

H'mimy et al (US 6,195,554 B1) discloses a system for assigning transmission channels.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Jinsong Hu', with a stylized, flowing script.

Jinsong Hu

February 3, 2006